

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ARTURO TORRES OCHOA,

Plaintiff,

v.

A. HERRERA et al.,

Defendants.

Case No. 3:14-cv-00491-MMD-VPC

ORDER

I. DISCUSSION

Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and a motion for appointment of counsel. (Dkt. no. 1-1, 1-2.) Plaintiff has not submitted an application to proceed *in forma pauperis* and has not paid the full filing fee for this case. On at least three (3) occasions, the Court has dismissed civil actions commenced by Plaintiff while in detention as frivolous or for failure to state a claim upon which any relief may be granted.¹

Pursuant to 28 U.S.C. § 1915(g), "if [a] prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted," he may not

¹See *Ochoa v. Cook et al.*, 3:02-cv-00450-LRH-VPC; *Ochoa v. Willis et al.*, 3:02-cv-00545-ECR-VPC (both dismissed for failure to state a claim upon which relief may be granted); *Ochoa v. Putter et al.*, 3:10-cv-00364-HDM-RAM (dismissed as delusional and factually frivolous). The Court takes judicial notice of its prior records in the above matters.

1 proceed *in forma pauperis* and, instead, must pay the full \$400.00 filing fee in advance
2 unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

3 In his complaint, Plaintiff appears to allege his dissatisfaction with the prison
4 food. (See *generally* dkt. no. 1-1.) The Court finds that these allegations fail to plausibly
5 allege that Plaintiff is in imminent danger of serious physical injury. See *Andrews v.*
6 *Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007) (holding that the exception to § 1915(g)
7 applies if the complaint makes a plausible allegation that the prisoner faced imminent
8 danger of serious physical injury at the time of filing). To the extent that Plaintiff is
9 alleging that prison officials are poisoning his food, the Court notes that Plaintiff has filed
10 several complaints in the past making those same allegations and the Court finds that
11 such allegations are delusional and factually frivolous. As such, Plaintiff must pre-pay
12 the \$400.00 filing fee in full.


13 **II. CONCLUSION**

14 For the foregoing reasons, it is ordered that this action will be dismissed without
15 prejudice unless Plaintiff pays the \$400.00 filing fee in full within thirty (30) days of entry
16 of this order.

17 It is further ordered that the Clerk of the Court shall send Plaintiff two (2) copies
18 of this order. Plaintiff shall make the necessary arrangements to have one copy of this
19 order attached to the check paying the filing fee.

20 It is further ordered that the Clerk of the Court shall retain the complaint (dkt. no.
21 1-1) and the motion for appointment of counsel (dkt. no. 1-2).

22 DATED THIS 23rd day of September 2014.

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25 MIRANDA M. DU
26 UNITED STATES DISTRICT JUDGE
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